

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MARK A. HOLUM,

Plaintiff,

v.

EXTENDICARE HOMES, INC.,
EXTENDICARE HEALTH SERVICES,
INC., and EXTENDICARE HEALTH
FACILITIES, INC.,

Defendants.

NO. CV-08-0081-EFS

**ORDER ENTERING COURT'S RULINGS
FROM FEBRUARY 25, 2009 HEARING**

A hearing occurred in the above-captioned matter on February 25, 2009, in Spokane. Plaintiff Mark A. Holum was present, represented by Marcia M. Meade and Robert F. Greer, II; Patrick J. Cronin appeared on Defendants' behalf. Before the Court were Defendants' motions to strike (Ct. Recs. [40](#), [41](#), [42](#), & [43](#)) and motion for summary judgment (Ct. Rec. [10](#)), as well as Plaintiff's oral motion to certify question to the Washington Supreme Court. The Court reviewed the submitted material, examined exhibits, listened to oral argument, and then granted and denied in part Defendants' motions to strike, granted Defendants' summary judgment motion, and denied Plaintiff's oral motion for certification. This Order serves to memorialize and supplement the Court's oral rulings.

I. Background¹

Troy Harris is a 37-year-old male suffering from developmental delays, cerebral palsy, bipolar disorder, depression, adjustment disorder, anxiety, seizure disorder, and recurrent aspiration pneumonia secondary to his inability to clear his lungs. (Ct. Recs. 31 at 3; 32 at 2.) On November 10, 2004, Mr. Harris' parents, physicians, current care representatives, and the Department of Social and Health Services met to discuss treatment and placement options. (Ct. Rec. 13-2 at 16.) After multiple "care conferences," a decision was made to transfer Mr. Harris from a group home to the Gardens on University ("The Gardens"), a skilled nursing facility located in Spokane, Washington. (Ct. Recs. 13-2 at 16; 14 at 3.)

The Gardens, which is owned and operated by Defendant Extendicare Homes, Inc., screens all patients before admission; prospective patients that present a current risk of harm to self or others are not allowed. (Ct. Rec. 47 at 3.) The Gardens screened Mr. Harris and admitted him on November 17, 2004. (Ct. Rec. 13-2 at 8.) Although Mr. Harris' records contain no mention of past physical aggression, the Gardens' nursing staff advised management repeatedly that mentally ill patients present a danger to other residents and the staff. (Ct. Recs. 13-2 at 8-19; 32 at 4.)

¹In a motion for summary judgment, the facts are set forth in a light most favorable to the nonmoving party - here, that is Plaintiff. *Leslie v. Grupo ICA*, 198 F.3d 1152, 1158 (9th Cir. 1999).

1 After admission, the Gardens conducts a seven-day evaluation in
2 order to develop a proper treatment plan for new patients. (Ct. Rec. 13
3 at 4.) This evaluation, known as the Minimum Data Set ("MDS"), examines,
4 *inter alia*, newly-admitted patients' cognitive patterns, communication
5 patterns, behavior patterns, psychosocial well-being, and physical
6 functioning. (Ct. Rec. 13-2 at 20-29.) Sincerie Arnold, a registered
7 nurse employed at the Gardens, supervised Mr. Harris' seven-day MDS
8 assessment. *Id.* at 28.

9 Ms. Arnold reported that, between November 17 and November 24, 2004,
10 Mr. Harris suffered from periods of restlessness, memory loss, poor
11 decision-making, difficulty communicating, and pained expressions on his
12 face. *Id.* at 24-25. Mr. Harris did not, however, exhibit verbally
13 abusive behavior, physically abusive behavior, socially disruptive
14 behavior, anger with himself, anger with others, or resistance to care.
15 *Id.* at 25. Importantly, Mr. Harris was also at ease in interacting with
16 others and was not restrained at any point since his arrival on November
17 17, 2004. *Id.* at 28.

18 Despite Mr. Harris' lack of documented aggressive behavior, he still
19 presented a unique challenge for the Gardens' nursing staff. Mr. Harris'
20 developmental delays, combined with his mental illness, made it possible
21 for him to deteriorate into a psychotic state. (Ct. Rec. 32 at 6.) It
22 also made communicating with Mr. Harris difficult because he could not
23 grasp basic social interactions and thinking. (Ct. Rec. 30 at 4.)
24 Additionally, Mr. Harris' mobility significantly increased his risk of
25 harm to other residents and staff because he could wander if left
26 unattended. (Ct. Rec. 32 at 6.) Mr. Harris therefore required higher

1 staff numbers to provide the requisite level of care. *Id.* at 5. And
2 finally, complications arising from Mr. Harris' medical conditions
3 required frequent hospitalizations. (Ct. Rec. 13-2 at 13.)

4 Concerns about Mr. Harris' presence at the Gardens were voiced
5 multiple times by several nurses. For example, Ms. Arnold informed
6 management that the Gardens did not have the staff or resources to handle
7 Mr. Harris, and that someone was going to be seriously injured. *Id.* at
8 12.² Michelle Rashka, a certified nurses aid working at the Gardens,
9 informed management that Mr. Harris was not a suitable resident because
10 his mental retardation prevented him from understanding that it was wrong
11 to grab or push people. (Ct. Rec. 33 at 4.) She also stated that Mr.
12 Harris exhibited confrontational behavior at his prior group home. *Id.*
13 at 3. Susan Goodrick, a registered nurse working at the Gardens, informed
14 management that Mr. Harris' behavior was "out of control" and that he
15 needed to be discharged from the Gardens because he was going to hurt
16 himself or others. (Ct. Rec. 31 at 4.)

17 On November 26, 2004, Mr. Harris assaulted a kitchen staff worker
18 attempting to provide Mr. Harris with one-to-one care.³ At 8:30 a.m. on
19 November 29, 2004, Mr. Harris was admitted to Sacred Heart Medical Center
20 due to increased respiratory difficulties, agitation, and behavioral
21

22 ²While Ms. Arnold alleges that she expressed her concerns about Mr.
23 Harris to management in writing on multiple occasions, no documented
24 evidence is before the Court. (Ct. Rec. 32 at 7.)

25 ³Although an incident report allegedly exists, no documented
26 evidence is before the Court.

1 problems. (Ct. Recs. 13-2 at 47; 31 at 3.) Sacred Heart staff
2 restrained Mr. Harris for safety reasons because he was wandering around
3 the hospital. (Ct. Rec. 31-2 at 15.) Sacred Heart treated and
4 discharged Mr. Harris in less than two (2) hours. (Ct. Rec. 32-3 at 44.)

5 After returning to the Gardens, Mr. Harris had two (2) documented
6 instances of assaultive behavior. At 4:30 p.m., he exhibited
7 "uncontrolled psychotic behavior," requiring his father to physically
8 restrain him; at 6:30 p.m., he kicked a nurse in the stomach and pulled
9 on her neck. (Ct. Rec. 13-2 at 47.) Contemporaneous medical records
10 show that Mr. Harris calmed shortly after the second incident and rested
11 quietly through the night. *Id.* at 48.

12 At 9:30 a.m. on November 30, 2004, Plaintiff, a registered nurse
13 employed at the Gardens, entered Mr. Harris' room in order to administer
14 tube feeding. (Ct. Rec. 30 at 4.) While Plaintiff had his back turned,
15 Mr. Harris attacked Plaintiff from behind. Mr. Harris' parents were
16 present and able to forcibly remove him from Plaintiff's back. (Ct. Rec.
17 13-2 at 48.) Despite Mr. Harris' parents' quick response, Plaintiff
18 sustained serious injuries. Treatment included physical therapy,
19 shoulder surgery, and a spinal fusion. Plaintiff still experiences
20 physical limitations due to the muscle and nerve injury.
21 (Ct. Rec. 30 at 5.)

22 On November 30, 2007, Plaintiff filed a Complaint in Spokane County
23 Superior Court alleging that Defendants are liable for injuries he
24 sustained after being attacked by Mr. Harris. Defendants removed the
25 case to federal court on March 3, 2008. (Ct. Rec. 1.) On December 2,
26 2008, Defendants moved for summary judgment on grounds that Plaintiff's

1 claim is precluded by Washington's Industrial Insurance Act, RCW
2 51.04.010.

3 II. Discussion

4 A. Summary Judgment Standard

5 Summary judgment is appropriate if the "pleadings, depositions,
6 answers to interrogatories, and admissions on file, together with the
7 affidavits, if any, show that there is no genuine issue as to any
8 material fact and that the moving party is entitled to judgment as a
9 matter of law." FED. R. CIV. P. 56(c). Once a party has moved for
10 summary judgment, the opposing party must point to specific facts
11 establishing that there is a genuine issue for trial. *Celotex Corp. v.*
12 *Catrett*, 477 U.S. 317, 324 (1986). If the nonmoving party fails to make
13 such a showing for any of the elements essential to its case for which
14 it bears the burden of proof, the trial court should grant the summary
15 judgment motion. *Id.* at 322. "When the moving party has carried its
16 burden of [showing that it is entitled to judgment as a matter of law],
17 its opponent must do more than show that there is some metaphysical doubt
18 as to material facts. In the language of [Rule 56], the nonmoving party
19 must come forward with 'specific facts showing that there is a *genuine*
20 *issue for trial.*'" *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*,
21 475 U.S. 574, 586-87 (1986) (citations omitted) (emphasis in original
22 opinion).

23 When considering a motion for summary judgment, a court should not
24 weigh the evidence or assess credibility; instead, "the evidence of the
25 non-movant is to be believed, and all justifiable inferences are to be
26 drawn in his favor." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255

(1986). This does not mean that a court will accept as true assertions made by the non-moving party that are flatly contradicted by the record. See *Scott v. Harris*, 550 U.S. 372, 380 (2007) ("When opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment.").

B. Motions to Strike (Ct. Recs. 40-43)

Defendants moved to strike several portions of several declarations submitted in opposition to their motion for summary judgment. (Ct. Recs. 40-43.) For the reasons articulated on the record, the Court ruled as follows:

Declaration	Location	Ruling
Mark Holum	Paragraph 10	Deny
Mark Holum	Paragraph 14	Grant (speculative)
Mark Holum	Paragraph 17	Grant (foundation, amorphous, qualifications)
Sincerie Arnold	Paragraph 11	Deny
Sincerie Arnold	Paragraph 12	Grant (personal knowledge, foundation, speculative)
Sincerie Arnold	Paragraph 13	Grant in Part - 1st Sentence (personal knowledge, foundation, speculative); Deny in Part - 2nd Sentence

1	Sincerie	Paragraphs	Deny
2	Arnold	14-15	
3	Sincerie	Paragraph 16	Grant (personal knowledge,
4	Arnold		foundation, speculative)
5	Sincerie	Paragraph 17	Deny
6	Arnold		
7	Sincerie	Paragraph 18	Grant in Part - 1st Sentence
8	Arnold		(personal knowledge, foundation,
9			speculative); Deny in Part - 2nd
10			Sentence
11	Sincerie	Paragraphs	Deny
12	Arnold	19-20, 24-28,	
13		and 30-34	
14	Sincerie	Paragraph 23	Grant (contradicted by medical
15	Arnold		records)
16	Sincerie	Paragraphs	Grant (personal knowledge,
17	Arnold	35-37	foundation, qualifications)
18	Sincerie	Paragraphs	Deny
19	Arnold	38-45	
20	Sincerie	Paragraph 48	Grant in Part - 1st + 2nd Sentences
21	Arnold		(foundation, qualifications); Deny in
22			Part (Last Sentence)
23	Sincerie	Paragraph 50	Deny
24	Arnold		
25	Sincerie	Paragraph 54	Grant in Part - 2nd Sentence
26	Arnold		(foundation, qualifications); Deny in
			Part - 1st Sentence

1	Sincerie	Paragraph 55	Grant in Part - 1st & 3rd Sentences
2	Arnold		(foundation, personal knowledge,
3			qualifications); Deny in Part - 2nd
4			Sentence
5	Sincerie	Paragraph 56	Grant (personal knowledge,
6	Arnold		foundation, qualifications)
7	Sincerie	Paragraph 58	Grant (personal knowledge,
8	Arnold		foundation)
9	Sincerie	Paragraphs	Deny
10	Arnold	59-60	
11	Sincerie	Paragraphs	Grant (personal knowledge,
12	Arnold	61-62	foundation, qualifications)
13	Sincerie	Paragraph 63	Deny
14	Arnold		
15	Sincerie	Paragraph 64	Grant in Part - 1st Sentence
16	Arnold		(personal knowledge, foundation,
17			speculative); Deny in Part - 2nd
18			Sentence
19	Michelle	Paragraphs 6-	Grant (personal knowledge,
20	Rashka	7	foundation)
21	Michelle	Paragraph 8	Deny
22	Rashka		
23	Michelle	Paragraph 9	Grant (personal knowledge,
24	Rashka		foundation)
25	Michelle	Paragraph 10	Grant in Part - 1st Sentence
26	Rashka		(personal knowledge, foundation);
			Deny in Part - 2nd Sentence

Michelle Rashka	Paragraphs 11-12	Grant in Part - 1st Sentence (personal knowledge, foundation, qualifications); Deny in Part - Remainder
Michelle Rashka	Paragraph 13	Grant in Part - 3rd Sentence (personal knowledge, foundation, speculation, hearsay); Deny in Part - Remainder
Sue Goodrick	Paragraph 9	Deny
Sue Goodrick	Paragraph 11	Deny
Sue Goodrick	Paragraph 12	Deny
Sue Goodrick	Paragraphs 15-16	Deny
Sue Goodrick	Paragraphs 17-20	Grant (personal knowledge, foundation, qualifications)

C. Multiple Entities

Plaintiff sued Extendicare Homes, Inc., Extendicare Health Services, Inc., and Extendicare Health Facilities, Inc. Defendant argues that the latter two (2) entities are not proper parties to this action because they have no involvement in either ownership or management of the Gardens. (Ct. Rec. 12 at 12.) At the hearing, Plaintiff did not oppose dismissing either Extendicare Health Services, Inc. or Extendicare Health Facilities, Inc. Accordingly, the Court dismisses these parties from the action.

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1 **D. Employer Immunity Under RCW 51.04.010**

2 The Washington Industrial Insurance Act ("WIIA"), enacted in 1911,
3 grants Washington employers immunity from lawsuits arising from workplace
4 injuries. *Birklid v. Boeing*, 127 Wn.2d 853, 858 (1995). In exchange for
5 immunity, the WIIA created a "swift, no-fault compensation system for
6 injuries on the job." *Id.* Employer immunity is not absolute; a limited
7 exception exists when an employer intentionally injures an employee:

8 If injury results to a worker from the deliberate intention of
9 his or her employer to produce such injury, the worker or
10 beneficiary of the worker shall have the privilege to take under
11 this title and also have cause of action against the employer
12 as if this title had not been enacted, for any damages in excess
13 of compensation and benefits paid or payable under this title.

14 RCW 51.24.020 (emphasis added). "Deliberate intention" means "(1) the
15 employer had actual knowledge that an injury was certain to occur and (2)
16 the employer willfully disregarded that knowledge." *Birklid*, 127 Wn.2d
17 at 865. This two-prong test for deliberate intention, known as the
18 *Birklid* test, is narrowly interpreted because Washington courts are
19 "mindful of the narrow interpretation . . . historically given to RCW
20 51.24.020, and of the appropriate deference four generations of
21 Washington judges have shown to the legislative intent embodied in RCW
22 51.04.010." *Id.* This means that negligence, gross negligence, or even
23 failure to observe safety procedures does not rise to the level of
24 deliberate intention. *Vallandigham v. Clover Park Sch. Dist. No. 400*,
25 154 Wn.2d 16, 27 (2005). Instead, there must be a "specific intent to
26 injure." *Id.*

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1 **1. Actual Knowledge**

2 Defendants argue that Mr. Harris' limited prior aggression and
3 unpredictable behavior made it impossible for management to know that
4 Plaintiff's injury was certain to occur. (Ct. Rec. 12 at 11.) Plaintiff
5 insists that genuine factual issues exist as to whether Mr. Harris'
6 behavioral history made it certain that he would physically assault a
7 nurse. (Ct. Rec. 29 at 9.)

8 Even viewing all the facts and evidence in Plaintiff's favor, he
9 cannot meet the *Birkliid* test's first prong. Two (2) cases are
10 informative on this issue: *Vallandigham v. Clover Park School District*
11 *No. 400*, 154 Wn.2d 16 (2005), and *Brame v. Western State Hospital*, 136
12 Wn. App. 740 (2007).

13 In *Vallandigham*, two (2) special education teachers sued the Clover
14 Park School District to recover for injuries caused by a severely
15 disabled special education student. 154 Wn.2d at 17. The student, who
16 suffered from epilepsy, mental retardation, and autism, assaulted both
17 students and teachers on 96 separate occasions during the 1999-2000
18 school year. The student's assaultive behavior included scratching,
19 hitting, pulling hair, biting, pinching, head butting, and grabbing
20 glasses. *Id.* at 19. The first special education teacher was injured
21 when the student head-butted her, causing her to fall backwards, hit her
22 head on a counter, and lose consciousness; the second special education
23 teacher was injured when the student bit her breast, leaving a mark. *Id.*
24 at 20. The trial court dismissed the suit, finding that the teachers did
25 not fall under WIIA's narrow exceptions to employer immunity. *Id.* at 24.

1 The Washington Supreme Court affirmed. In doing so, the Supreme
2 Court emphasized that "the first prong of the *Birklid* test can be met in
3 only very limited circumstances where continued injury is not only
4 substantially certain but *certain* to occur." *Id.* at 32 (emphasis in
5 original). The Supreme Court found that a special needs child's behavior
6 is "far from predictable," making it impossible to know with certainty
7 whether violent behavior - even if frequent - "would not cease as quickly
8 as it began." *Id.* at 33.

9 In *Brame*, Western State Hospital employees sought to recover for
10 injuries caused by assaults from patients with mental illnesses. The
11 employees insisted recovery was proper because the hospital knew with
12 certainty that patients would assault staff and it willfully disregarded
13 this knowledge. 136 Wn. App. at 748-49. For support, the employees
14 relied on the history of patient-to-staff assaults. *Id.* at 749. The
15 trial court dismissed the suit, finding that the employees did not fall
16 under WIIA's narrow exception to employer immunity. *Id.*

17 The Court of Appeals affirmed. In doing so, the court concluded
18 that "past patient-to-staff assaults demonstrate, at the most, that such
19 assaults are foreseeable, not that they are certain." *Id.* Importantly,
20 the court relied on *Vallandigham* and found that "[l]ike the behavior of
21 a child with special needs, the behavior of an individual with mental
22 illness is 'far from predictable.' A patient's mental health may regress
23 without warning and for unknown reasons." *Id.* (internal citations
24 omitted).

25 Plaintiff attempts to distinguish both these cases by arguing that
26 Mr. Harris' assaultive behavior, unlike the student in *Vallandigham* and

1 the mental patients in *Brame*, was entirely predictable.
2 (Ct. Rec. 29 at 12.) This argument is belied by Mr. Harris' medical
3 records - medical records prepared by licensed physicians, licensed
4 nurses, and certified nurse assistants employed at the Gardens and
5 elsewhere. For example, Mr. Harris' admission records make no mention
6 of previous violence or aggressive behavior. The seven-day MDS
7 evaluation conducted by Ms. Arnold revealed no signs of verbally abusive
8 behavior, physically abusive behavior, socially disruptive behavior, or
9 resistance to care. (Ct. Rec. 13-2 at 20-29.)⁴ And the contemporaneous
10 progress notes filled out by treating nurses on a daily basis show no
11 violent, aggressive, or assaultive behavior between Mr. Harris' admission
12 date and November 29, 2004. *Id.* at 37-47.

13 According to Ms. Arnold, Mr. Harris did assault a kitchen employee
14 on November 26, 2004. Assuming this is true for summary judgment
15 purposes, this means that Mr. Harris exhibited assaultive behavior on
16 only three (3) occasions over nearly two (2) weeks - the other two (2)
17 incidents occurred within hours of each other on November 29, 2004, after
18 Mr. Harris was discharged from Sacred Heart. These random assaults -
19 spanned over two (2) weeks - are far from predictable. Like the student
20 in *Vallandigham* and the mental patients in *Brame*, the Gardens' management
21 "could not know what [Mr. Harris'] behavior would be from day to day.
22
23

24 ⁴Ms. Arnold's seven-day MDS evaluation seemingly contradicts her
25 Declaration, which states that she consistently and repeatedly warned
26 management that Mr. Harris was a danger to others. (Ct. Rec. 32 at 7.)

1 No one could be sure that [Mr. Harris'] behavior would not cease as
2 quickly as it began." *Vallandigham*, 154 Wn.2d at 33.

3 It is presumed true that the Gardens' nursing staff repeatedly
4 warned management that mentally ill patients present a danger to other
5 residents and the staff. (Ct. Rec. 32 at 4.) It is also presumed true
6 that the Gardens' nursing staff repeatedly warned management that they
7 lacked the staff or resources to handle Mr. Harris, and that someone was
8 going to be seriously injured. *Id.* at 12. These repeated warnings, in
9 conjunction with Mr. Harris' prior behavior, at best establishes that
10 there was a substantial certainty that an employee or resident would be
11 injured. Substantial certainty is not enough; certainty of injury is
12 required. *Vallandigham*, 154 Wn.2d at 34 (emphasis added).

13 There are only four (4) reported cases where Washington courts have
14 found that the *Birkliid* test's first prong was met. See *Birkliid v.*
15 *Boeing*, 127 Wn.2d 853 (1995) (finding that Boeing knew its employees
16 would become ill from impregnating manufactured parts with resin when,
17 during pre-production testing, employees complained of dizziness, burning
18 eyes, and stomach ailments); *Baker v. Schatz*, 80 Wn. App. 775 (1996)
19 (finding that employer knew with certainty that its employees would
20 become ill from repeated toxic chemical exposure); *Hope v. Larry's*
21 *Markets*, 108 Wn. App. 185 (2001) (finding that employer knew injury was
22 certain to occur when an employee repeatedly complained that cleaning
23 chemicals were causing burns and a severe rash); and *Stenger v. Stanwood*
24 *Sch. Dist.*, 95 Wn. App. 802 (1999) (finding that school district knew its
25 employees would continue to be injured when a developmentally-delayed
26 student inflicted over 1,300 injuries to school staff over four years).

1 *Stenger* is the only Washington case finding that the *Birklid* test's
2 first prong was met absent injuries caused by chemical exposure.
3 *Vallandigham*, 154 Wn.2d at 31. *Stenger's* precedent did not last. In
4 *Vallandigham*, the Washington Supreme Court "disapproved" *Stenger's*
5 conclusion that *Birklid's* first prong was met, reasoning that even 1,300
6 assaults inflicted over four (4) years was insufficient to establish that
7 the employer had actual knowledge that injury was certain to occur in the
8 future. *Id.* at 34.⁵ In other words, no surviving Washington court
9 decision has found that the *Birklid* test's first prong was met when an
10 employees' injuries were caused by a mentally handicapped individual.

11 The standard for satisfying *Birklid's* first prong is exceptionally
12 high. "Disregard of a risk of injury is not sufficient to meet the first
13 *Birklid* prong; certainty of actual harm must be known and ignored." *Id.*
14 at 28 (emphasis in original). Given the unpredictable nature of
15 developmentally-delayed, mentally ill individuals like Mr. Harris, at no
16 point could the Gardens' management have been certain that staff assaults
17 would continue. Summary judgment is proper.

18 **2.____Willful Disregard of Certain Injury**

19 ____Because Plaintiff cannot meet *Birklid's* first prong, it is
20 unnecessary to consider whether the Gardens' management willfully
21 disregarded the knowledge of certain injury.
22
23
24

25 ⁵It is unclear why *Strenger* was not appealed to the Washington
26 Supreme Court.

1 **E. Oral Motion to Certify Issue to the Washington Supreme Court**

2 After the Court orally granted Defendants' summary judgment motion,
3 Plaintiff moved to certify a question to the Washington Supreme Court.
4 For the reasons articulated on the record, the Court denied this motion
5 because the Court's Scheduling Order required certification issues to be
6 identified no later than the dispositive motion filing date.
7 (Ct. Rec. [9](#).) This did not occur.

8 **III. Conclusion**

9 For the reasons articulated on the record, **IT IS HEREBY ORDERED:**

10 1. Defendants' Motion to Strike Portions of the Declaration of Mark
11 Holum (Ct. Rec. [40](#)) is **GRANTED AND DENIED IN PART;**

12 2. Defendants' Motion to Strike Portions of the Declaration of
13 Michelle Rashka (Ct. Rec. [41](#)) is **GRANTED AND DENIED IN PART;**

14 3. Defendants' Motion to Strike Portions of the Declaration of
15 Sincerie Arnold (Ct. Rec. [42](#)) is **GRANTED AND DENIED IN PART;**

16 4. Defendants' Motions to Strike Portions of the Declaration of Sue
17 Goodrick (Ct. Rec. [43](#)) is **GRANTED AND DENIED IN PART;**

18 5. Plaintiff's oral motion to certify question to the Washington
19 Supreme Court is **DENIED;**

20 6. Defendants' Motion for Summary Judgment (Ct. Rec. [10](#)) is **GRANTED;**

21 7. **Judgment** shall be entered in Defendants' favor;

22 8. All pending hearing and trial dates are **STRICKEN;**

23 9. All remaining pending motions are **DENIED AS MOOT;** and

24 10. This file shall be **CLOSED.**

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26 \\
ORDER ~ 17

DATED this 6th day of March 2009.

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